ARTHUR S. WATKINS, ROBERT M. ECKERMAN

IBLA 76-728; IBLA 76-729 Decided November 12, 1976

Appeals from separate decisions of the New Mexico State Office, Bureau of Land Management, requiring execution of affidavits prior to issuance of oil and gas leases in response to offers NM 028714 and NM 028136.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Drawings--Words and Phrases

   The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) does not interdict the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents --Oil and Gas Leases: Applications: Drawings

   Under 30 U.S.C. § 226 (1970), the Department has no authority to issue an oil and gas lease to anyone other than the first qualified applicant. If an agent signs an offer for an applicant, the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been filed. Where a rubber stamp constitutes an applicant's signature, a State Office of the Bureau of Land Management

need not presume that an applicant rather than an agent stamped the card, and where no agent's statement has been submitted, the State Office may take appropriate action to establish that the applicant's signature was imprinted at his request and that he formulated the offer.

APPEARANCES: James W. McDade, Esq., McDade & Lee, Washington, D.C. for appellants.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Arthur S. Watkins and Robert W. Ackerman have appealed from separate decisions dated June 20, 1976, of the New Mexico State Office, Bureau of Land Management, requiring them to execute an affidavit prior to the issuance to each of them of an oil and gas lease.

In drawings held pursuant to the simultaneous filing procedures of the oil and gas regulation, 43 CFR Subpart 3112, the drawing card of Watkins, NM 28714, was drawn first for parcel 690 and of Eckerman, NM 028136, for parcel 652. However, each appellant's name was signed on the drawing entry card with a facsimile rubber stamp signature.

The State Office required each appellant to submit an affidavit stating that the stamped name was intended as a signature and that the appellant stamped his name himself or that it was made in his presence. Appellants charge that the State Office's decision improperly exceeds the requirement of 43 CFR 3112.2-1(a) that offers be "signed and fully executed" as that phrase was construed by this Board in Mary I. Arata,
4 IBLA 201, 78 I.D. 397 (1971).

These appeals are indentical with those recently considered by the Board in Robert C. Leary, 27 IBLA 296 (1976).

[1] The Board held that a signature affixed with a rubber stamp can satisfy the requirement that the drawing entry card be fully signed and executed, 43 CFR 3112.2-1(a), if it is the offeror's intention that the stamp be his signature.

[2] It then pointed out that the Department has no authority to issue an oil and gas lease to anyone other than the first qualified applicant and that if an agent signed an offer for an applicant, the applicant cannot be considered qualified unless the statements required by the pertinent provisions in the regulation 43 CFR 3102.6-1, have been filed.

It held that where a rubber stamp constitutes an applicant's signature, the State Office need not presume that an applicant

rather than an agent stamped the card, and where no agent's statement has been submitted the State Office may take appropriate action to establish that the appellant's signature was imprinted at his request and that he formulated the offer.

It concluded that if the State Office is not satisfied that the regulations have been complied with, it should require the offeror to state all the circumstances under which the imprint was made and the offer formulated including, without limitation, (a) whether the offeror himself imprinted the facsimile, or (b) whether the imprint was performed in his presence. It then emphasized that while an affirmative answer by the applicant to either (a) or (b) would establish the facsimile to be his signature, negative answers would not necessarily invalidate the offer. That is, there would be other circumstances in which offeror could establish that he intended the stamped signature to be his.

The decision then found that in view of the provisions of 18 U.S.C. § 1001 (1970), a signed statement would be sufficient, rather than an affidavit.

In two other recent cases, the Board has affirmed the propriety of a BLM State Office inquiring into the circumstances surrounding the preparation and filing of a drawing entry card which has a signature affixed by means of a stamp or other mechanical device.

In Evelyn Chambers, 27 IBLA 317 (1976), the Board said that "agent" as used in 43 CFR 3102.6-1 does not include an employee who has no discretionary authority and merely acts as an amenuensis in affixing the employer's stamp on an oil and gas lease offer drawing card, even if it is done outside the physical presence of the employer. In such circumstances, the statements required by that regulation need not be filed.

In William J. Sparks, 27 IBLA 330 (1976), the Board held in the circumstances of that case that the one who affixed the offeror's signature by imprinting it on the drawing entry card was an agent or attorney-in-fact who was required to file the statements required by 43 CFR 3102.6-1. There an attorney-in-fact had been appointed with authority to execute drawing entry cards and all documents required by the regulations and to reproduce the offeror's signature mechanically.

In Sparks the Board said:

> * * * at a minimum, BLM should inquire to ascertain who affixed the facsimile signature, where the action occurred and why the facsimile was used. Further BLM may inquire to learn who determined what land to file for * * *.

In Chambers, the Board found that in addition to the information required by the affidavit framed by the State Office, the offeror should be permitted to state the facts from which the BLM may draw its own conclusions as to whether the person affixing the signature was an agent or attorney-in-fact within the meaning of 43 CFR 3102.6-1. The offeror should state the business relationship between him or the person who affixed the signature and all pertinent factors.

These cases establish the propriety of the inquiry made by the BLM State Office and the obligation of the offeror to respond if he wishes to be considered for a lease. However they have modified the State Office decisions by holding that a statement by the offeror subject to 43 U.S.C.
§ 1001 (1970) is sufficient, rather than an affidavit, and that the offeror can submit other information to clarify the authority of this relationship with the person affixing his signature, if he had not done that himself. These modifications are equally applicable to these appeals.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the State Office are affirmed as modified.

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Martin Ritvo
Administrative Judge

We concur:

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Joan B. Thompson
Administrative Judge

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Frederick Fishman
Administrative Judge